

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

| | | |
|-------------------------------|---|----------------------------|
| ALLIANCE OF AUTOMOBILE |) | |
| MANUFACTURERS, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civ. No. 02-149-B-W |
| |) | |
| |) | |
| MARTHA KIRKPATRICK, |) | |
| |) | |
| Defendant |) | |

**ORDER AFFIRMING THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

On July 17, 2003, the United States Magistrate Judge filed with the Court her Recommended Decision on the parties' cross-motions for summary judgment, recommending that the Court deny the Plaintiff's Motion and grant the Defendant's Motion. On July 31, 2003, the Plaintiff filed its Objection to the Recommended Decision and a Motion Oral Argument on the Objection. On August 18, 2003, the Defendant and the amici curiae parties each filed a separate Response to the Objection and, on August 20, 2003, the Defendant and the amici curiae parties filed a joint opposition to the Plaintiff's Motion for Oral Arguments. The Plaintiff filed its reply to the responses on August 26, 2003.

The Plaintiffs Motion for Oral Argument is DENIED. The parties' comprehensive memoranda provide an ample basis upon which to decide the Objection.

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and I concur with the recommendations of the

United States Magistrate Judge for the reasons set forth in her Recommended Decision, and determine that no further proceeding is necessary.^{1, 2}

1. It is ORDERED that the Plaintiff's Motion for Oral Arguments is DENIED;
2. It is further ORDERED that the Recommended Decision of the Magistrate Judge is AFFIRMED; and,
3. It is further ORDERED that the Plaintiff's Motion for Summary Judgment is DENIED and the Defendant's Motion for Summary Judgment is GRANTED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
United States District Judge

Dated this 17th day of February, 2004.

¹ The Court has carefully reviewed those portions of the Recommended Decision that the Plaintiff argues contain either omissions of its statements of material facts or erroneous restatements of its statement of material facts. The Court concludes the alleged discrepancies are either immaterial or erroneous.

² The Magistrate Judge eschewed legislative history in favor of the plain language of the statute and instructed the Plaintiff, to the extent that it disagreed with her decision, to explain the materiality of such legislative history in its Objection to this Court. The Plaintiff has shown neither ambiguity in the language of the statute nor the materiality of the legislative history to the outcome of the case.

Plaintiff

**ALLIANCE OF AUTOMOBILE
MANUFACTURERS**

represented by **HAROLD J. FRIEDMAN**
FRIEDMAN, GAYTHWAITE,
WOLF & LEAVITT
SIX CITY CENTER
P. O. BOX 4726
PORTLAND, ME 04112-4726
761-0900
Email: hfriedman@fgwl-law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JULIE ANNA POTTS
MAYER, BROWN, ROWE & MAW
1909 K STREET, NW
WASHINGTON, DC 20006
202/263-3370
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
FRIEDMAN, GAYTHWAITE,
WOLF & LEAVITT
SIX CITY CENTER
P. O. BOX 4726
PORTLAND, ME 04112-4726
761-0900
Email: mgaythwaite@fgwl-law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RUSSELL R. EGGERT
MAYER, BROWN, ROWE & MAW
190 SOUTH LASALLE STREET
CHICAGO, IL 60603-3441
312/701-7350
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

EPA, ME COMM

represented by **DENNIS J. HARNISH**
STATE HOUSE STATION 6
AUGUSTA, ME 04333
207-626-8800
Email: dennis.harnish@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant

**NATURAL RESOURCES
COUNCIL OF MAINE**

represented by **BENJAMIN W. LUND**
BRANN & ISAACSON
184 MAIN STREET
P. O. BOX 3070
LEWISTON, ME 04243-3070
786-3566
Email: blund@brannlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JON P. DEVINE, JR.
NATURAL RESOURCES
DEFENSE COUNCIL INC
1200 NEW YORK AVENUE, NW
SUITE 400
WASHINGTON, DC 20005
(202) 289-6868
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

NANCY S. MARKS
NATURAL RESOURCES
DEFENSE COUNCIL INC.
40 WEST 20TH STREET
NEW YORK, NY 10011
(212) 727-4414
Email: nmarks@nrdc.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PETER J. BRANN
BRANN & ISAACSON
184 MAIN STREET
P. O. BOX 3070
LEWISTON, ME 04243-3070
786-3566
Email: pbrann@brannlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LAWRENCE M. LEVINE
NATURAL RESOURCES
DEFENSE COUNCIL INC.
40 WEST 20TH STREET
NEW YORK, NY 10011
(212) 727-4414
ATTORNEY TO BE NOTICED

**NATURAL RESOURCES
DEFENSE COUNCIL, INC**

represented by **BENJAMIN W. LUND**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JON P. DEVINE, JR.
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

NANCY S. MARKS
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PETER J. BRANN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LAWRENCE M. LEVINE
(See above for address)
ATTORNEY TO BE NOTICED

MAINE PEOPLES ALLIANCE

represented by **BENJAMIN W. LUND**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JON P. DEVINE, JR.
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

NANCY S. MARKS
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PETER J. BRANN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LAWRENCE M. LEVINE
(See above for address)
ATTORNEY TO BE NOTICED

**LEARNING DISABILITIES
ASSOCIATION OF MAINE**

represented by **BENJAMIN W. LUND**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JON P. DEVINE, JR.
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

NANCY S. MARKS
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PETER J. BRANN
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LAWRENCE M. LEVINE
(See above for address)
ATTORNEY TO BE NOTICED